Supreme Court, U.S.
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No. 91-1210

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

BILL CLINTON, GOVERNOR OF ARKANSAS, ET AL ..... *Appellants*

vs.

M. C. JEFFERS, ET AL ..... *Appellees*

APPELLANTS' SUPPLEMENT TO JURISDICTIONAL STATEMENT

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Appellees have moved to dismiss this appeal, ostensibly because the Court does not have jurisdiction to entertain it under 28 U.S.C. §1253 (1988) since the order appealed from is not one granting or denying an interlocutory or permanent injunction. Motion to Dismiss, Page 8. Contrary to appellees' assertion, it specifically has been held that the United States Supreme Court has exclusive jurisdiction under 28 U.S.C. §1253 over appeals from attorney-fee awards made by a properly-convened three-judge district court in Voting Rights Act cases. *Weiser v. White,* 505 F.2d 912, 913, 918 (5th Cir.) *cert. denied,* 421 U.S. 993 (1975). Although, technically, such an order is neither a grant nor a denial of an injunction, collateral matters dependent upon the injunctive suit should be heard under 28 U.S.C. §1253 to assure the orderly process of judicial administration. Id. at 914; *see Benson v. Beens,* 456, F.2d 244, 245 (8th Cir. 1972). This holds true notwithstanding that the principal appeal has been resolved at an earlier time. *Weiser,* 505 F.2d 913.

Should the Court decline to exercise jurisdiction over this appeal, appellants respectfully request that it follow its previous practice employed in appeals from three-judge courts when the appellate jurisdictional issue was unsettled, which "has been to vacate the district court judgment and remand the case for entry of a fresh decree from which an appeal may be taken to the appropriate court of appeals." *Norton v. Matthews*, 427, U.S. 524, 531 (1976); *Gonzalez v. Automatic Employers Credit Union*, 419 U.S. 90, 101 (1974); *Wilson v. City of Port Lavaca*, 391 U.S. 532 (1968). Given that the Eighth Circuit has refused to entertain appeals from three-judge district courts, *see Doe v. Turner*, 499 F.2d 1134 (8th Cir. 1973); *Benson*, 456 F.2d 245, appellants did not file a "protective appeal" in this case simultaneously with this appeal. Therefore, should the Court decline to exercise jurisdiction over this appeal and not vacate the district court's order as appellants have requested, appellants will have no avenue of relief from the order enhancing appellees' already-generous attorney's fee award. See FRAP 4(a)(1)(5).

Appellants respectfully request that appellees' Motion to Dismiss be denied, or, in the alternative, that the district court's attorney fee award be vacated and remanded with instructions to enter a fresh decree.

Respectfully submitted,

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